



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Roopali H. Desai, Esq.
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2800 North Central Avenue
Suite 1200
Phoenix, AZ 85004

NOV 20 2013

RE: MUR 6675
Vernon Parker for Congress and Kelly
Lawler in her official capacity as treasurer

Dear Ms. Desai:

On November 7, 2013, the Federal Election Commission reviewed the allegations in your complaint dated November 1, 2012, and dismissed the allegation that Vernon Parker for Congress and Kelly Lawler in her official capacity as treasurer violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1). Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Vernon Parker for Congress and
Kelly Lawler in her official capacity as treasurer

MUR 6675

I. INTRODUCTION

This matter involves allegations that Vernon Parker for Congress and Kelly Lawler in her official capacity as treasurer (the “Committee”) violated the Federal Election Campaign Act, as amended (the “Act”), by failing to include an appropriate disclaimer in automated phone calls the Committee funded. Compl. at 1. The Complaint specifically alleges that the Committee conducted a telephone “push poll” that provided a negative message about Parker’s opponent, Kyrsten Sinema. *Id.* The Complaint argues that, as a public communication, such calls require a disclaimer under the Act and Commission regulations. *Id.*

The Response acknowledges that it paid for the automated calls but contends the calls are not a “public communication” because they constitute a poll rather than a telephone bank and thus require no disclaimer. Resp. at 2-3. Furthermore, the Response states that the Committee spent only \$500 on the calls and Parker ultimately lost the election. *Id.* at 1, 5. Accordingly, the Response argues that the Commission should either find no reason to believe that it violated the Act — given that the calls did not require a disclaimer — or dismiss this matter pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985). *Id.* at 5.

As set forth below, given the small scope of the activity, the Commission exercises its prosecutorial discretion and dismisses this matter. *See Heckler*, 470 U.S. at 821.

II. FACTUAL BACKGROUND

Vernon Parker was a candidate for the United States House of Representatives in Arizona’s 9th Congressional District in 2012. Parker designated Vernon Parker for Congress as

his principal campaign committee. *See* Statement of Candidacy (Apr. 13, 2012). Kyrsten Sinema was his opponent. Parker lost the general election held on November 6, 2012.

On October 15, 2012, the Committee placed 6,596 automated calls to likely voters in the relevant congressional district. *See* Compl. at 1; Resp. at 4. The first question posed in the calls asked recipients for whom they intended to vote, instructing them to press 1 for Republican Vernon Parker, 2 for Democrat Kyrsten Sinema, or 3 if undecided. Resp. at 4. The second question began by informing recipients that Sinema once served as a criminal defense attorney and had represented “murderers” and then asked “Do you think Sinema should release her client list?” Compl. at 1; Resp. at 4. Of the 6,596 calls, the Response states that 596 recipients responded to the first question, and 480 responded to the second. Resp. at 4. The Committee later reported that while 44.6% of the respondents stated that they would vote for Parker and 41.7% stated that they would vote for Sinema, 63% of respondents stated that Sinema should release her client list. *Id.* at 5.

The Complaint alleges that the calls constituted a “public communication” but failed to include a disclaimer stating who had paid for them. Compl. at 1. The Complaint further asserts that on October 16, 2012, the day after the calls were placed, the Committee posted a press release on its Facebook page claiming that the calls showed Parker leading the race and that a majority of voters wanted Sinema to disclose her client list. *Id.* at 1, Ex. 1.

The Response concedes that the Committee paid for the calls. Resp. at 4. It also acknowledges that the calls omitted a disclaimer. *Id.* at 1, 4. The Response contends that these calls required no disclaimer because the calls did not constitute “political advertising” or a “public communication.” *Id.* at 1, 3-4. The Response asserts that the calls were “legitimate polling” designed to test a potential campaign message, the results of which shaped Parker’s

5 Accordingly, the Commission exercises its prosecutorial discretion and dismisses the allegation
6 that the Committee violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1) by failing to
7 include an appropriate disclaimer in a public communication. *See Heckler*, 470 U.S. at 821.